

EXHIBIT A

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:)
)
)
)
PG&E CORPORATION,)
)
and) Bankruptcy Case
) No. 19-30088 (DM)
PACIFIC GAS and ELECTRIC,)
COMPANY,)
)
)
Debtors.)
)
)

CONFIDENTIAL

Deposition of PG&E, By and through its Designated
Representative,
JANAIZE M. MARKLAND
San Francisco, California
Wednesday, July 3, 2019

Reported by Stenographer
MARY J. GOFF
CSR No. 13427
Job No. 163807

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5 DEPOSITION of JANAIZE M. MARKLAND, Volume I, taken
6 on behalf of Official Committee of Unsecured Creditors,
7 at FTI Consulting, 50 California Street, Suite 1900,
8 San Francisco, California 94111, beginning at
9 9:30 a.m. and ending at 11:11 a.m., on July 3, 2019,
10 before MARY J. GOFF, California Certified Shorthand
11 Reporter No. 13427.
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1 APPEARANCES:

2
3 For Official Committee of Unsecured Creditors

4 Milbank

5 BY: ALAN STONE

6 JULIE WOLF

7 Attorneys at Law

8 55 Hudson Yards

9 New York, New York 10001

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12
13 For Debtors and Janaize M. Markland

14 Weil, Gotshal & Manges

15 BY: THEODORE TSEKERIDES

16 Attorney at Law

17 767 Fifth Avenue

18 New York, New York 10153

1 APPEARANCES (continued):

2
3 For Official Committee of Tort Claimants "TCC"

4 Baker & Hostetler

5 BY: LARS FULLER

6 Attorney at Law

7 1801 California Street

8 Denver, Colorado 80202

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14 ALSO PRESENT: Tom Schinckel

1 is attached to the transcript.)

2 Q (BY MR. STONE) Ms. Markland, I'm handing you a
3 document that's been marked as Exhibit 1. That is your
4 "Declaration" that was filed in this action.

5 And we'll be referring to this frequently
6 today, so I wanted you to have that in front of you.

7 A Thank you.

8 Q So you have been responsible for, among other
9 things, the company's director and officer insurance for
10 the last five years; is that right?

11 A That's correct.

12 Q And when -- when you say that you're
13 responsible for it, what is your role with respect to
14 the director and officer insurance program?

15 A My role is to secure financial risk transfer
16 for our directors and officers typically on an annual
17 basis.

18 So my job involves working with our brokers to
19 approach insurance markets and bind -- bind capacity to
20 the benefit of our directors and officers.

21 Q Okay. Does -- does PG&E have a specific
22 broker for D&O insurance?

23 A We do. Marsh.

24 Q Have you used Marsh continuously since you
25 took over the D&O program?

1 A Yes, we have.

2 Q Okay. Are you familiar with the concept of an
3 insurance tower?

4 A I am.

5 Q Okay. And what does that mean to you?

6 A An insurance tower is the amount of limits
7 that we have. So the total capacity that we purchase on
8 behalf of our directors and officers.

9 And then within that, I think of it as
10 somewhat of a high-rise building, different tenants on
11 each floor.

12 And the tower is built based on the amount of
13 capacity and the amount of capacity individual companies
14 are willing to offer.

15 We build the tower with multiple different
16 insurance companies until we reach the amount of
17 financial risk transfer we're looking for.

18 Q Right. So you'll have a primary carrier and
19 then you'll have excess carriers above that; is that
20 correct?

21 A Correct.

22 Q Okay. Who -- have you had the same primary
23 carrier for the last five years?

24 A I believe so, yes.

25 Q And who is that?

1 A That's correct.

2 Q And that's in the case that the company cannot
3 or will not indemnify; is that right?

4 A That's true.

5 Q How much was the premium for the 2017 tower in
6 total, including the Side A?

7 A Oh, I don't remember.

8 Q Okay. Do you remember the magnitude?

9 A A couple million dollars.

10 Q All right. And that -- that policy expired in
11 May of 2018; is that right?

12 A Correct.

13 Q And during the -- or early part of 2018, you
14 worked with Marsh to try to procure a new policy for the
15 company; is that right?

16 A That's right.

17 Q Okay. And am I correct that the 2018 policies
18 consist of 200 million in regular side ABC coverage and
19 a hundred million in Side A DIC?

20 A That's correct.

21 Q And in addition to that, there are two
22 reinstatement limits?

23 A Yes.

24 Q Okay. Can you explain how the reinstatements
25 limits work?

1 filed the claim and the nature of the action and the
2 claims themselves.

3 Q Okay. Do you know who prepared this document?

4 A I believe our law department did.

5 Q Okay. I think you said before that you were
6 not familiar with the substance of the claims?

7 A No. Like, I haven't read the individual
8 claims. I'm aware of sort of broad strokes what they
9 are about, but not detailed arguments for the case. I
10 haven't read the papers.

11 Q Okay. What do you understand in broad strokes
12 what they are about?

13 A Generally wrongful acts committed by boards
14 of -- members of the boards of directors. And they're
15 different depending on the action that was taken.

16 Q Okay. Do you know the status of the cases
17 that were noticed under the policies on page 9?

18 A I believe they're all stayed at the moment.

19 Q Okay. And would you agree with me that
20 because they're all stayed, that there are no fees and
21 costs being incurred with respect to those actions?

22 A I --

23 MR. TSEKERIDES: Objection to the form.

24 A -- yeah, I don't know what's being incurred.

25 Q (BY MR. STONE) Okay.

1 Q Okay.

2 A -- mean, it makes sense. That's the answer.

3 Q The Response No. 3 says, The amount incurred
4 to date [REDACTED] retention under the
5 2017 and 2018 D&O policies. Accordingly, at this time,
6 both towers contain the coverage limits described in the
7 motion.

8 Do you see that?

9 A I do.

10 Q And does that comport with your understanding?

11 A It does.

12 Q Okay. When it says there's a [REDACTED]
13 retention, is that a [REDACTED] retention under each
14 policy?

15 A It is.

16 Q Okay. Now, the 2018 policy that you initially
17 procured was to expire on May 20, 2019; is that right?

18 A That's right.

19 Q And at some point PG&E negotiated an extension
20 of that policy?

21 A That's correct.

22 Q Okay. Tell me about the process of -- of
23 getting that extension.

24 A Sure. So we worked with our broker, Marsh, to
25 reach out to incumbent markets on our tower and talk

1 about the possibility of an extension.

2 We went to New York to discuss, as we normally
3 do -- it's somewhat of a marketing trip -- the status of
4 the company, what's going on, the uncertainty involved
5 in our current deteriorating financial condition at the
6 time.

7 And then due to that uncertainty, we asked
8 that they would consider extending the limits for
9 another year rather than purchasing a fresh set of
10 limits in May of 2020 -- or 2019, when we normally would
11 have.

12 We start that process generally in February
13 anyway, so it was not unusual to go out to the markets
14 and ask at that time.

15 Q Okay. And is that when it -- when those
16 discussions occurred?

17 A No. They occurred in January.

18 Q Okay. Was -- was there a discussion at that
19 time about the possibility of a bankruptcy filing?

20 A No.

21 Q Okay. What was the reason for seeking an
22 extension as opposed to getting a new policy?

23 A Well, deteriorating financial conditions of
24 the company, ongoing uncertainty. There was a lot of
25 news about PG&E and its fate.

1 the claims or anything like that, no.

2 Q Okay. What were the discussions that you had
3 when you were getting the policies?

4 A So we were talking about the status of
5 derivatives and securities claims against the company
6 with respect to the 2017 and 2018 policies.

7 Q When did those discussions occur?

8 A That was in January.

9 Q Okay. And what did the insurers tell you at
10 that time with respect to the issue of whether they
11 would treat claims under the 2018 policy as being the
12 same as those claims that have been noticed under the
13 2017 policy?

14 A They did not provide a position in that
15 discussion, so it -- they were listening. We were
16 telling them the updates.

17 And they didn't say one way or the other
18 whether they were going to treat them as a single
19 relating-back issue or if there were two towers in play.

20 Q Okay. When did you first become aware that
21 one or more participants in the tower -- in the tower
22 were taking the position that -- that claims under the
23 2018 policy could be relate -- could relate back to the
24 2017 policy?

25 A Springtime at some point as we started

1 discussions about: What is the status of our current
2 policy coverage?

3 So we talked about scenarios.

4 Q Okay. And who raised that issue?

5 MR. TSEKERIDES: Objection to the form. You
6 can answer.

7 A I believe it was our general counsel, Janet
8 Loduca, who asked the question: What do we have?

9 Q (BY MR. STONE) Asked the question of whom?

10 A Me.

11 Q Okay. And were you the one who raised the
12 possibility that the insurers might take the position
13 that claims noticed under the 2018 policy related back
14 to the 2017 policy?

15 A No, it was not me. It was either Marsh or our
16 law department. I don't remember who.

17 Q Okay. And there's an indication in this
18 sentence that we were looking at that said, At least one
19 carrier has indicated an intention to do so, meaning
20 to -- to make that argument?

21 A Decision, yeah.

22 Q Do you know who that is?

23 A I don't.

24 Q Okay. Do you know if that carrier is the
25 primary carrier?

1 A It may be.

2 Q But you don't know?

3 A I don't know for sure.

4 Q Okay. Who would know that?

5 A Robin Reilly would know that.

6 Q Who is Robin Reilly?

7 A Robin Reilly is our D&O attorney. She
8 supports -- she's not a D&O attorney, per se. She
9 supports our D&O program. She's a PG&E attorney.

10 Q Okay. Further on in the paragraph -- and I
11 don't mean to deprive you of the opportunity to read the
12 entire paragraph, but it says, Under these
13 circumstances, in the unfortunate event of a
14 post-petition wildfire, the insurers may similarly
15 attempt to treat any new claims as part of the same
16 single claim triggering only the 2017 policies.

17 Do you see that?

18 A I do.

19 Q To your knowledge, has any insurer made the
20 statement that they would treat any new claim arising
21 from a post-petition wildfire as the same single claim
22 triggering only the 2017 policy?

23 A Well, I believe in that sentence that you read
24 me previously, it says, At least one carrier has
25 indicated an intention to do so --

1 Q Right --

2 A -- so...

3 Q And that -- that's -- that sentence was
4 referring to those claims that have already been noticed
5 under the --

6 A Oh, I see. Sorry.

7 Q -- 2017 and 2018 policies.

8 This is -- this relates -- my question now
9 relates to a post-petition wildfire, which is what that
10 sentence --

11 MR. TSEKERIDES: All right. So if you need to
12 read the paragraph so you're both on the same page --

13 A Yeah. Okay. I -- yeah, I understand.
14 Post-petition wildfire, the insurers may similarly
15 attempt to treat any new claims as part of a new claim.

16 MR. TSEKERIDES: You can read it to yourself.

17 A Yeah. Sorry.

18 Can you repeat the question?

19 Q (BY MR. STONE) Sure. To your knowledge, has
20 any insurer made the statement that they would treat any
21 new claim arising from a post-petition wildfire as the
22 same single claim triggering only the 2017 policy?

23 A Not to my knowledge, no.

24 Q The next paragraph -- sentence in that
25 paragraph says, Under these circumstances, the available

1 coverage under the 2017 policies could be exhausted as a
2 result of the prepetition claims noticed to the
3 insurers, which would lead -- leave no coverage under
4 the 2017 policies for the new directors and officers.

5 Do you see that?

6 A I do.

7 Q What is the basis for your belief that the
8 2017 policies could be exhausted as a result of the
9 prepetition claims noticed to the insurers?

10 A The list of them that we have currently
11 outstanding, that's the basis.

12 Q Okay.

13 A There are a number of actions.

14 Q So the fact that there are these 16 actions,
15 that's your basis?

16 A Um-hum.

17 Q Okay. And in --

18 A I mean, the ones that were noticed to the 2017
19 tower.

20 Q The -- you'll agree with me that Exhibit 3
21 indicates that so far [REDACTED] in defense costs
22 have -- has been paid out with respect to those claims,
23 right?

24 A That's what this document says, yes.

25 Q All right. Do you have -- do you have any

1 basis to believe that there will be additional amounts
2 incurred with respect to those claims between now and
3 the end of the bankruptcy?

4 A I don't know.

5 Q Okay. Well, let's assume that the actions all
6 are stayed through the end of the bankruptcy.

7 Do you have a belief that there will be
8 additional costs associated with those claims between
9 now and the -- the end of bankruptcy?

10 MR. TSEKERIDES: Objection to the form --

11 A I don't know --

12 MR. TSEKERIDES: -- hypothetical.

13 A -- yeah.

14 Q (BY MR. STONE) Okay. Well, who would know
15 that?

16 MR. TSEKERIDES: Objection to the form.

17 A Our law department would know that --

18 Q (BY MR. STONE) Okay.

19 A -- may know that.

20 THE COURT REPORTER: (Reporter clarification.)

21 A Our law department may know that.

22 Q (BY MR. STONE) Okay. Just so I'm clear, the
23 basis for your belief that those 2017 policies could be
24 exhausted as a result of prepetition claims noticed to
25 the insurers is these 16 actions that have been listed

1 on page 9 of Exhibit 2?

2 A And also as a result of scenario analysis that
3 we undertook to understand how these claims may play
4 out.

5 Q Okay. What scenario analysis is that?

6 A So conference call discussions with our
7 external counsel and internal counsel and Marsh to
8 discuss the current state of our D&O coverage and under
9 what conditions it could be exhausted.

10 Q Okay. All right. Well, what was the
11 substance of those discussions?

12 MR. TSEKERIDES: Well, hold on a second. If
13 you can answer that in a way that doesn't divulge -- I
14 assume it's -- let me go off the record for a second.

15 MR. STONE: Yeah, you can confer. That's
16 fine.

17 (Discussion off the record.)

18 Q (BY MR. STONE) Ms. Markland, we were
19 discussing some conference call discussions with your
20 external counsel and internal counsel and Marsh to
21 discuss the current state of our D&O coverage, under
22 what conditions it could be exhausted.

23 And my question to you was: What was the
24 substance of those discussions?

25 A So I characterize them as brainstorming

1 sessions. So we were just talking about what could
2 happen, how could it be considered.

3 Mostly a creative process really to understand
4 all the different ways. I mean, typically in any sort
5 of risk assessment you would want to know what could
6 potentially happen, and that's the conversation that we
7 had.

8 Q Okay. Did you walk away from that conference
9 call believing that there was a significant possibility
10 that the company would have to pay out -- or --
11 significant amounts of money with respect to these
12 claims?

13 MR. TSEKERIDES: Objection to the form.

14 A I came away from that conversation believing
15 there was a lot of uncertainty about what would be paid
16 out when, to whom, and how much, and whether anything
17 would be left for our directors and officers.

18 Q (BY MR. STONE) Was there a discussion of the
19 fact that the actions had been stayed during the
20 bankruptcy?

21 A I don't believe that was part of the
22 discussion.

23 Q Okay. Did anyone raise the idea that while an
24 action is stayed, there's not a lot of -- there's not a
25 lot of cost related to -- to the claims?

1 in -- in the context of bankruptcy?

2 A Correct.

3 Q What is your basis for that?

4 A The policies themselves that state it; that
5 it's available there in case that -- we're indemnifiable
6 by the re -- the company.

7 So Robin and -- Reilly and I have had this
8 discussion in previous years about what that actually
9 means prior to bankruptcy even occurring.

10 And so I said, You know, in what circumstances
11 would the company be unable to indemnify our directors
12 and officers?

13 And she said, If we were in bankruptcy.

14 So that's the basis of my discussion -- or my
15 statement.

16 Q Okay. Do you have any understanding of
17 whether a director or officer who incurs costs in
18 connection with business for the company or
19 indemnification -- or as a result of lawsuits during a
20 bankruptcy has an ability to recover that as an
21 administrative expense in a bankruptcy?

22 A I don't know the details of it.

23 Q Okay. In paragraph 25, you say, It is my view
24 that the EIS policy is essential to attract and retain
25 board members and senior officers and to provide them

1 with adequate coverage to enable them to carry out their
2 duties during the pendency of Chapter 11 cases.

3 Do you see that?

4 A I do.

5 Q And what is your basis for that statement?

6 A Doing this job and in particular obtaining
7 directors and officers insurance for our company board
8 of directors and our officers since 2014, I provide an
9 annual update to the board on the status of insurance
10 coverage every year.

11 And every year, this is a very interesting
12 topic to them about how much coverage they have, so I
13 know it's important to the board of directors we did
14 have.

15 I understand from discussions with my peers
16 that directors and officers insurance is commonly
17 procured for their boards as well. It seems as though
18 it's a standard expectation that there will be
19 sufficient coverage for D&Os and that -- that is
20 important for attracting and retaining.

21 Q Do you have any reason to believe that any
22 board members or senior officers have a belief that the
23 current coverage under the 2018 policy is not adequate?

24 MR. TSEKERIDES: Objection --

25 A I don't --

1 MR. TSEKERIDES: I'm going to have one
2 question.

3 EXAMINATION BY COUNSEL
4 BY MR. TSEKERIDES:

5 Q Ted Tsekerides for the company. You were
6 asked some questions earlier about why you couldn't just
7 wait on the EIS policy.

8 My question is: Do you know if the EIS policy
9 would be available, let's say, in six months if a loss
10 came in between now and then?

11 A No, it wouldn't. You can't get insurance post
12 event.

13 MR. TSEKERIDES: Okay. I have no further
14 questions.

15 MR. STONE: I have got a follow-up.

16 MR. TSEKERIDES: Okay.

17 EXAMINATION BY COUNSEL
18 BY MR. STONE:

19 Q With respect to the question that you just
20 answered from Mr. Tsekerides, what is your basis for
21 believing that you can't get insurance post event?

22 A I would equate that to buying insurance after
23 your house burns down. Home insurance, you can't insure
24 post fact. That's probably a legal term I'm using
25 incorrectly.

1 But once the damage is done, you can't say:

2 Oops, I should have bought an insurance policy.

3 Q Okay. Any other basis for that belief?

4 A No.

5 Q Okay. Can you get the insurance for -- well,
6 I'll withdraw it.

7 MR. STONE: I have no further questions.

8 MR. TSEKERIDES: Okay. Just do

9 "Confidential."

10

11 (TIME NOTED: 11:11 a.m.)

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